

## **TENTATIVE RULINGS for CIVIL LAW and MOTION**

### **May 4, 2009**

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at [www.yolo.courts.ca.gov](http://www.yolo.courts.ca.gov). If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Fifteen: (530) 406-6942

#### **TENTATIVE RULING**

**Case:** Christopher-Miles v. Adams et al.

**Case No.** CV CV 08-2503

**Hearing Date:** May 4, 2009 Department Fifteen **9:00 a.m.**

Defendants' demurer to plaintiff's second amended complaint ("SAC") is **SUSTAINED IN PART AND OVERRULE IN PART** as follows:

Defendants' demurrer to the first, fifth and sixth causes of action in the SAC as against defendant Jorge Ayala, individually, is **SUSTAINED WITHOUT LEAVE TO AMEND**. (Code Civ. Proc., § 430.10, subd. (e); Gov. Code, § 12940, subd. (k); *Fiol v. Doellstedt* (1996) 50 Cal.App.4<sup>th</sup> 1318, 1326.) A supervisor who does not participate in the harassing conduct is not personally liable under FEHA.

Defendants' demurrer to the first and sixth causes of action as to defendant Jorge Ayala as Superintendent of Schools, Ronda Adams and Yolo County Office of Education is **SUSTAINED WITH LEAVE TO AMEND**. (Code Civ. Proc., § 430.10, subd. (e).) To establish a prima facie case of sexual harassment plaintiff must show that the harassment was based on plaintiff's sex and the harassment was sufficiently severe or pervasive to alter the conditions of the plaintiff's employment and create an abusive working environment. (*Fisher v. San Pedro Peninsula Hospital* (1989) 214 Cal.App.3d 590, 608-609.) Plaintiff failed to state facts sufficient to show that the harassment was based on plaintiff's sex and that the harassment was sufficiently severe or pervasive to alter the conditions of plaintiff's employment and create an abusive working environment. (*Id.*; *Lyle v. Warner Brothers Television Productions* (2006) 38 Cal.4<sup>th</sup> 264, 283.)

Defendants' demurrer to the third cause of action is **SUSTAINED WITH LEAVE TO AMEND**. (Code Civ. Proc., § 430.10, subd. (e).) Plaintiff failed to state facts sufficient to state a cause of action.

Defendants' demurrer to the fourth cause of action is **OVERRULED**. (Gov. Code, § 44951.) Plaintiff stated facts sufficient to constitute the cause of action.

Defendants' demurrer to the fifth cause of action is **SUSTAINED WITH LEAVE TO AMEND**. (Code Civ. Proc., § 430.10, subd. (e).) To establish a prima facie case of gender discrimination, plaintiff must show that she was replaced by a person outside the protected class, or that similarly situated non-protected employees were treated more favorably. (*Vincent v. Brewer Co.* (6th Cir. 2007) 514 F.3d 489, 494.) Plaintiff failed to allege that she was replaced by a person outside the protected class, or similarly situated non-protected employees were treated more favorably.

Defendants' demurrer to the seventh cause of action is **SUSTAINED WITH LEAVE TO AMEND**. (Code Civ. Proc., § 430.10, subd. (e); *Trujillo v. North County Transit District* (1998) 63 Cal.App. 4<sup>th</sup> 280.) Plaintiff failed to plead facts sufficient to state a cause of action.

Defendants' motion to strike the tenth cause of action and portions of the prayer of the SAC is **GRANTED WITH LEAVE TO AMEND**. (Code Civ. Proc., §§ 435 *et seq.* and 471.5; Cal. Rules of Court, rule 3.1324(c); *People v. Clausen* (1967) 248 Cal.App.2d 770, 785-786.) Plaintiff did not seek leave of Court to amend the first amended complaint to add a new cause of action and the additional prayers of relief. Plaintiff also failed to allege in the tenth cause of action that she exhausted her administrative remedies prior to her filing this claim.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

#### **TENTATIVE RULING**

**Case:** **Ford v. McGuire**

**Case No. CV PM 08-2685**

**Hearing Date:** **May 4, 2009** **Department Fifteen** **9:00 a.m.**

Interstate Distributor Company's unopposed motion to compel a further response to form interrogatory no. 2.8 is **GRANTED**. (Code Civ. Proc., §§ 2017.010, 2030.220 and 2030.300, subd. (a)(1); Evid. Code, § 788.) Interstate Distributor Company shall serve the plaintiff with a copy of this order by no later than May 5, 2009. Plaintiff shall serve Interstate Distributor Company with a verified response to form interrogatory no. 2.8 by no later than May 15, 2009.

Interstate Distributor Company's unopposed request for monetary sanctions against Charles Ford is **GRANTED** in the amount of \$625.00. (Cal. Rules of Court, rule 3.1030.)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice, except as provided herein, is required.